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**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF ALASKA AT ANCHORAGE**

ENOCH ADAMS, JR., LEROY ADAMS,  
ANDREW KOENIG, JERRY NORTON  
DAVID SWAN and JOSEPH SWAN,

Plaintiffs,

v.

TECK COMINCO ALASKA INCORPORATED

Defendant.

NANA REGIONAL CORPORATION and  
NORTHWEST ARCTIC BOROUGH,

Intervenors-Defendants.

Case No. A04-49 (JWS)

PLAINTIFFS' EMERGENCY  
MOTION FOR PROTECTIVE  
ORDER

Approximately 45 minutes ago, plaintiffs counsel became aware of a filing by defendant Teck Cominco that plaintiffs believe is a serious breach of the confidentiality of settlement negotiations and defendant's counsel's ethical obligations. To remedy this breach – the public disclosure of confidential settlement positions of the plaintiffs – plaintiffs request on an

PLAINTIFFS' EMERGENCY MOTION FOR  
PROTECTIVE ORDER

1 emergency basis that the following documents be either stricken entirely from the Court's files or  
2 that public access to those files be limited under Fed. R. Civ. Proc. 5(e): Docket 361-2 (Affidavit  
3 of Sean Halloran, disclosing plaintiffs' positions in negotiations wholly unrelated to the dispute  
4 at issue here); Docket 361-3 (earlier version of Settlement Agreement that is superseded by that  
5 filed already with this Court at Docket 355-2); and Docket 361-5 (email of plaintiffs' counsel to  
6 mediator during settlement negotiations). Plaintiffs request that this protective order be invoked  
7 immediately to limit public disclosure of the confidential information.

8 The dispute in this case is only about the Consent Decree. The disclosure of other terms  
9 and conditions of the settlement agreement is wholly unnecessary and verges on bad faith  
10 behavior by defendant's counsel. Evidence Rule 408 prohibits the use of settlement  
11 communications to "impeach... conduct or statements made in compromise negotiations  
12 regarding the claim." F.R.E. Rule 408(a).

13 The disclosure of plaintiffs' settlement positions is necessarily prejudicial to the  
14 plaintiffs. Cole dec. ¶2. Allowing the public – including the press, which has been closely  
15 following this dispute, apparently through PACER<sup>1</sup> – access to the plaintiffs' internal  
16 communications with the mediator, as well as versions of the Settlement Agreement that were  
17 later superseded, is prejudicial to the plaintiffs, is unnecessary for the resolution of the current  
18 dispute before this Court, and can only have been done to create mischief by Teck Cominco.  
19 Cole dec. ¶3. The harm to the plaintiffs of having their internal deliberations published for  
20 anyone to read – particularly in the close-knit community of Kivalina – is considerable, Cole dec.  
21 ¶4, and should be enjoined by this Court by either striking the offending documents or causing  
22 them to be unavailable to anyone except parties to this lawsuit. If the Court takes the second  
23 option, plaintiffs request that it instruct defendants' counsel on his ethical obligations to maintain  
24 confidentiality of settlement discussions.

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26 <sup>1</sup>See, e.g., Tony Hopfinger and Joe Schneider, "Teck Cominco proposes \$120 million  
27 pipeline to end Alaska suit," Bloomberg.com (August 2, 2008) (quoting Teck Cominco's court  
28 filing of the previous day).

1 Plaintiffs will request leave to file a sur-reply to address significant factual inaccuracies in  
2 Teck Cominco's filing at Docket 361, but at this time request that the Court maintain the  
3 confidentiality of the parties' (including plaintiffs') positions during the settlement negotiations  
4 that resulted in the Settlement Agreement.

5 Respectfully submitted, August 6, 2008.

6  
7 /S/ Luke Cole

8 Luke Cole  
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13 CERTIFICATE OF SERVICE

14 I hereby certify that on the 6th day of August 2008, a true and correct copy of the foregoing Plaintiffs' Emergency Motion for  
Protective Order was served, via the Court's electronic mail distribution system, on the below identified counsel of record:

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20 /S/ Luke Cole

21 Luke Cole  
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